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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,793	05/30/2001	Stephen Joseph Vesper	VESPER1	5682

1444 7590 03/15/2011

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EXAMINER

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09866793	5/30/2001	VESPER, STEPHEN JOSEPH	VESPER1

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EXAMINER

PATRICIA DUFFY

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1645	20110310

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Commissioner for Patents

The amendment filed 2-26-2010 is not in compliance with 37 CFR 1.121 (see attached notice).

The amendment filed 2-26-2010 is not responsive and provides for an impermissible switch in invention. The current claims are broadly drawn to methods of detection of hemolysin using culturing which would be joined to the method of claim 38, which was withdrawn from consideration in the final rejection mailed 4-8-2005. Newly submitted claims 34-45 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The appealed and rejected claims were drawn to methods of detection in an animal sample by contacting the sample with an antibody. The current claims require culturing of a broad sample including non-biological samples not previously considered and are the subject of the withdrawn Group including claim 38. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34-45 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Inasmuch as, there remains no invention that is directed to the originally examined claims, the amendment is held non-responsive.

Since the above-mentioned reply appears to be bona fide, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

/Patricia A. Duffy/
Primary Examiner, Art Unit 1645